

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRIS MONROE CONE,
Plaintiff,
v.
LOPEZ,
Defendant.

Case No. 1:25-cv-00669-KES-BAM (PC)
ORDER REGARDING PLAINTIFF'S
MOTION TO DISMISS
(ECF No. 15)

Plaintiff Chris Monroe Cone (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This action proceeds against Defendant Lopez for excessive force in violation of the Eighth Amendment for the incident on August 28, 2024.

On June 26, 2025, the Court issued an order for Plaintiff to show cause why Defendant Lopez should not be dismissed from this action after the U.S. Marshal was unable to locate the defendant for service of process. (ECF No. 14.)

In response, Plaintiff filed a Motion to Dismiss. (ECF No. 15.) Plaintiff states that he does not know any personal identifiable information about the Corcoran SATF prison guard who on video body slammed Plaintiff without cause. Plaintiff notes that the guard should be easily identifiable by watching the body camera footage and argues that this case is still evidence of physical, mental, and emotional injuries suffered related to his other pending action.

1 Nevertheless, Plaintiff apologizes for the lack of identification of the guard and requests that the
2 case be dismissed. (*Id.*)

3 “[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action
4 prior to service by the defendant of an answer or a motion for summary judgment.” *Commercial*
5 *Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and
6 citation omitted). “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is
7 required, the parties are left as though no action had been brought, the defendant can’t complain,
8 and the district court lacks jurisdiction to do anything about it.” *Id.* at 1078. No defendant has
9 been served in this action and no defendant has filed an answer or motion for summary
10 judgment.

11 Accordingly, this action is terminated, without prejudice, by operation of law without
12 further order from the Court. Fed. R. Civ. P. 41(a)(1)(A)(i). The Clerk of the Court is directed to
13 terminate all pending motions and close this case.

14 IT IS SO ORDERED.
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16 Dated: July 15, 2025

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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